

111TH CONGRESS
1ST SESSION

S. 1581

To improve the amendments made by the No Child Left Behind Act of 2001.

IN THE SENATE OF THE UNITED STATES

AUGUST 5, 2009

Mr. CRAPO (for himself and Mrs. LINCOLN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To improve the amendments made by the No Child Left Behind Act of 2001.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Enhancing Flexibility
5 for Effective Schools Act”.

6 **SEC. 2. REFERENCES.**

7 Except as otherwise specifically provided, whenever in
8 this Act an amendment or repeal is expressed in terms
9 of an amendment to, or a repeal of, a section or other
10 provision, the reference shall be considered to be made to

1 a section or other provision of the Elementary and Sec-
 2 ondary Education Act of 1965 (20 U.S.C. 6301 et seq.).

3 **SEC. 3. ADEQUATE YEARLY PROGRESS.**

4 (a) ACCOUNTABILITY.—Section 1111(b)(2) (20
 5 U.S.C. 6311(b)(2)) is amended—

6 (1) in subparagraph (I)(ii)—

7 (A) by striking “95 percent” the first place
 8 the term appears and inserting “90 percent
 9 (which percentage shall be based on criteria es-
 10 tablished by the State in the State plan)”; and

11 (B) by striking “95 percent” the second
 12 place the term appears and inserting “90 per-
 13 cent”;

14 (2) by redesignating subparagraph (K) as sub-
 15 paragraph (N); and

16 (3) by inserting, after subparagraph (J), the
 17 following:

18 “(K) SINGLE COUNT OF STUDENTS.—In
 19 meeting the definition of adequate yearly
 20 progress under subparagraph (C), a student
 21 who may be counted in 2 or more groups de-
 22 scribed in subparagraph (C)(v)(II), may be
 23 counted as an equal fraction of 1 for each such
 24 group.

1 “(L) STUDENTS WITH DISABILITIES RE-
2 QUIRING ALTERNATE ASSESSMENTS.—Notwith-
3 standing any other provision of this part, a
4 State may implement the amendments made to
5 part 200 of title 34, Code of Federal Regula-
6 tions on December 9, 2003 (68 Fed. Reg.
7 68698) (related to achievement of students with
8 significant cognitive disabilities), as if such
9 amendments—

10 “(i) permitted the proficient or ad-
11 vanced scores on alternate assessments of
12 not more than 3.0 percent of all tested stu-
13 dents to be considered as proficient or ad-
14 vanced, respectively, for the purposes of
15 determining adequate yearly progress, ex-
16 cept that—

17 “(I) any assessment given to any
18 such so considered student for the
19 purposes of determining such ade-
20 quate yearly progress shall be re-
21 quired by the individualized education
22 program of such so considered stu-
23 dent;

24 “(II) the individualized education
25 program shall reflect the need for any

1 such alternate assessment based on
2 the evaluation of such so considered
3 student and the services provided such
4 so considered student under section
5 614 of the Individuals with Disabil-
6 ities Education Act; and

7 “(III) the individualized edu-
8 cation program shall include written
9 consent from the parent of such so
10 considered student prior to such alter-
11 nate assessment being administered;

12 “(ii) used the term ‘students requiring
13 alternate assessments’ in lieu of the term
14 ‘students with the most significant cog-
15 nitive disabilities’; and

16 “(iii) permitted the eligibility, of such
17 so considered students to have the stu-
18 dents’ scores of proficient or advanced on
19 alternate assessments counted as proficient
20 or advanced for purposes of determining
21 adequate yearly progress, to be determined
22 by the State educational agency, except
23 that such eligibility shall, at a minimum,
24 include—

1 “(I) such so considered students
2 who are receiving services pursuant to
3 a plan required under section 504 of
4 the Rehabilitation Act of 1973;

5 “(II) the students described in
6 subclause (I) who are assessed at a
7 grade level below the grade level in
8 which the students are enrolled (out
9 of level assessments); and

10 “(III) the students described in
11 subclause (I) who are considered stu-
12 dents with the most significant cog-
13 nitive disabilities, as defined by the
14 State educational agency, on the day
15 before the date of enactment of the
16 Enhancing Flexibility for Effective
17 Schools Act.

18 “(M) OTHER MEASURES OF ADEQUATE
19 YEARLY PROGRESS.—Notwithstanding any
20 other provision of this paragraph, a State may
21 establish in the State plan an alternative defini-
22 tion of adequate yearly progress, subject to ap-
23 proval by the Secretary under subsection (e).
24 Such alternative definition may—

1 “(i) include measures of student
2 achievement over a period of time (such as
3 a growth model or value added account-
4 ability system) or the progress of some or
5 all of the groups of students described in
6 subparagraph (C)(v) to the next higher
7 level of achievement described in subpara-
8 graph (II) or (III) of paragraph (1)(D)(ii)
9 as a factor in determining whether a
10 school, local educational agency, or State
11 has made adequate yearly progress, as de-
12 scribed in this paragraph; or

13 “(ii) use the measures of achievement
14 or the progress of groups described in
15 clause (i) as the sole basis for determining
16 whether the State, or a local educational
17 agency or school within the State, has
18 made adequate yearly progress, if—

19 “(I) the primary goal of such
20 definition is that all students in each
21 group described in subparagraph
22 (C)(v) meet or exceed the proficient
23 level of academic achievement, estab-
24 lished by the State, not later than 12

1 years after the end of the 2001–2002
2 school year; and

3 “(II) such definition includes in-
4 termediate goals, as required under
5 subparagraph (H).”.

6 (b) ASSESSMENTS.—Section 1111(b)(3)(C) (20
7 U.S.C. 6311(b)(3)(C)) is amended—

8 (1) in clause (ix), by striking subclause (III)
9 and inserting the following:

10 “(III) the inclusion of limited
11 English proficient students, who—

12 “(aa) may, consistent with
13 paragraph (2)(M), be assessed,
14 as determined by the local edu-
15 cational agency, through the use
16 of an assessment which requires
17 achievement of specific gains for
18 up to 3 school years from the
19 first year the student is assessed
20 for the purposes of this sub-
21 section;

22 “(bb) may, at the option of
23 the State educational agency, be
24 assessed in the first year the stu-
25 dent attends school in the United

1 States (not including the Com-
 2 monwealth of Puerto Rico); and
 3 “(cc) shall not be included
 4 in any calculation of an adequate
 5 yearly progress determination
 6 when the student is in the first
 7 year of attendance at a school in
 8 the United States (not including
 9 the Commonwealth of Puerto
 10 Rico).”; and

11 (2) in clause (x), by inserting “of clause (ix)”
 12 after “subclause (III)”.

13 (c) REGULATIONS AFFECTING LIMITED ENGLISH
 14 PROFICIENT CHILDREN AND CHILDREN WITH DISABIL-
 15 ITIES.—Section 1111 (20 U.S.C. 6311) is amended by
 16 adding at the end the following:

17 “(n) CODIFICATION OF REGULATIONS AFFECTING
 18 LIMITED ENGLISH PROFICIENT CHILDREN.—Notwith-
 19 standing any other provision of this part, this part shall
 20 be implemented consistent with the amendments proposed
 21 to part 200 of title 34 of the Code of Federal Regulations
 22 on June 24, 2004 (69 Fed. Reg. 35462) (relating to the
 23 assessment of limited English proficient children and the
 24 inclusion of limited English proficient children in sub-
 25 groups), as if such amendments permitted students who

1 were previously identified as limited English proficient to
 2 be included in the group described in subsection
 3 (b)(2)(C)(v)(II)(dd) for 3 additional years, as determined
 4 by a local educational agency (based on the individual
 5 needs of a child) for the purposes of determining adequate
 6 yearly progress.”.

7 **SEC. 4. SCHOOL IMPROVEMENT AND PUBLIC SCHOOL**
 8 **CHOICE.**

9 Section 1116(b) (20 U.S.C. 6316(b)) is amended—

10 (1) in paragraph (1)—

11 (A) in subparagraph (A), by inserting “(in
 12 the same subject for the same group of stu-
 13 dents, as described in section
 14 1111(b)(2)(C)(v))” after “2 consecutive years”;

15 (B) in subparagraph (E)(i)—

16 (i) by striking “In the case” and in-
 17 serting “Except as provided in subpara-
 18 graph (G), in the case”; and

19 (ii) by striking “all students enrolled
 20 in the school with the option to transfer to
 21 another public school” and inserting “stu-
 22 dents who failed to meet the proficient
 23 level of achievement on the assessments de-
 24 scribed in section 1111(b)(3), are enrolled
 25 in the school, and are in the group whose

academic performance caused the identification under this paragraph, with the option to transfer to one other public school identified by and”; and

(C) by adding at the end the following:

“(G) OPTIONS.—A local educational agency may offer supplemental educational services as described in subsection (e) in place of the option to transfer to another public school described in subparagraph (E), for the first school year a school is identified for improvement under this paragraph.”;

(2) in the matter preceding subparagraph (A) of paragraph (5), by inserting “for the same group of students” after “adequate yearly progress”; and

(3) in the matter preceding clause (i) of paragraph (7)(C), by inserting “for the same group of students” after “adequate yearly progress”.

SEC. 5. SUPPLEMENTAL EDUCATIONAL SERVICES.

Section 1116(e)(4) (20 U.S.C. 6316(e)(4)) is amended—

(1) in subparagraph (B), by inserting “(developed through consultation with local educational agencies in the State)” after “objective criteria”;

1 (2) in subparagraph (D), by striking “and”
2 after the semicolon;

3 (3) in subparagraph (E), by striking the period
4 and inserting at the end “; and”; and

5 (4) by adding at the end the following:

6 “(F) develop procedures by which a local
7 educational agency may—

8 “(i) present complaints, and docu-
9 mentation of such complaints, to the State
10 educational agency regarding the qualifica-
11 tion, operation, and evaluation—

12 “(I) of approved providers; and

13 “(II) providers of supplemental
14 educational services seeking to become
15 approved providers under this sub-
16 section; and

17 “(ii) demonstrate to the State edu-
18 cational agency that a provider of supple-
19 mental educational services should not be
20 approved to provide supplemental edu-
21 cational services under this subsection to
22 any students attending the schools served
23 by the local educational agency.”.

1 **SEC. 6. FLEXIBILITY FOR SPECIAL EDUCATION MIDDLE OR**
2 **SECONDARY SCHOOL TEACHERS.**

3 Section 9101(23)(B)(ii) (20 U.S.C. 7801(23)(B)(ii))
4 is amended—

5 (1) in subclause (I), by striking “or” after the
6 semicolon;

7 (2) in subclause (II), by striking “; and” and
8 inserting “; or”; and

9 (3) by adding at the end the following:

10 “(III) in the case of a special
11 education teacher, obtaining a State
12 special education certificate that
13 qualifies the teacher to teach special
14 education in the State; and”.

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